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| <b>TRANSMITTAL FORM</b><br><i>(to be used for all correspondence after initial filing)</i> |    | Application No.        | 09/522,325         |
|  |    | Filing Date            | March 9, 2000      |
|  |    | First Named Inventor   | Mohammad R. Zonoun |
|  |    | Art Unit               | 2686               |
|  |    | Examiner Name          | Nghi H. Ly         |
| Total Number of Pages in This Submission   | 36 | Attorney Docket Number | 3239P059           |

| ENCLOSURES <i>(check all that apply)</i>   |   |  |
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|--|--|
| Firm or Individual name                    | Thinh V. Nguyen, Reg. No. 42,034<br>BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP |
| Signature                                  | <i>Handwritten signature of Thinh V. Nguyen</i>                            |
| Date                                       | January 27, 2006   |

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| Typed or printed name   | Tu T. Nguyen                                 |      |                  |
| Signature   | <i>Handwritten signature of Tu T. Nguyen</i> | Date | January 27, 2006 |



# FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

## Complete if Known

|                      |                    |
|----------------------|--------------------|
| Application Number   | 09/522,325         |
| Filing Date          | March 9, 2000      |
| First Named Inventor | Mohammad R. Zonoun |
| Examiner Name        | Nghi H. Ly         |
| Art Unit             | 2686               |
| Attorney Docket No.  | 3239P059           |

☐ Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$) 500.00

## METHOD OF PAYMENT (check all that apply)

☒ Check ☐ Credit card ☐ Money Order ☐ None ☐ Other (please identify): \_\_\_\_\_

☒ Deposit Account Deposit Account Number: 02-2666 Deposit Account Name: Blakely, Sokoloff, Taylor & Zafman LLP

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|---------------------------|----------|--------------|----------|--|----------|
| Fee Code                  | Fee (\$) | Fee Code     | Fee (\$) |  |          |
| 1051                      | 130      | 2051         | 65       | Surcharge - late filing fee or oath                              |          |
| 1052                      | 50       | 2052         | 25       | Surcharge - late provisional filing fee or cover sheet.          |          |
| 2053                      | 130      | 2053         | 130      | Non-English specification  |          |
| 1251                      | 120      | 2251         | 60       | Extension for reply within first month                           |          |
| 1252                      | 450      | 2252         | 225      | Extension for reply within second month                          |          |
| 1253                      | 1,020    | 2253         | 510      | Extension for reply within third month                           |          |
| 1254                      | 1,590    | 2254         | 795      | Extension for reply within fourth month                          |          |
| 1255                      | 2,160    | 2255         | 1,080    | Extension for reply within fifth month                           |          |
| 1401                      | 500      | 2401         | 250      | Notice of Appeal   | 500.00   |
| 1402                      | 500      | 2402         | 250      | Filing a brief in support of an appeal                           |          |
| 1403                      | 1,000    | 2403         | 500      | Request for oral hearing   |          |
| 1451                      | 1,510    | 2451         | 1,510    | Petition to institute a public use proceeding                    |          |
| 1460                      | 130      | 2460         | 130      | Petitions to the Commissioner                                    |          |
| 1807                      | 50       | 1807         | 50       | Processing fee under 37 CFR 1.17(q)                              |          |
| 1806                      | 180      | 1806         | 180      | Submission of Information Disclosure Stmt                        |          |
| 1809                      | 790      | 1809         | 395      | Filing a submission after final rejection (37 CFR § 1.129(a))    |          |
| 1810                      | 790      | 2810         | 395      | For each additional invention to be examined (37 CFR § 1.129(b)) |          |
| Other fee (specify) _____ |          |              |          |  |          |
| SUBTOTAL (2)              |          |              |          | (\$)   | 500.00   |

## SUBMITTED BY

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|                   |                 |                                      |          |           |                |
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Docket No.: 003239.P059

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application. No. : 09/522,325  
Applicant : Mohammad R. Zonoun  
Filed : 03-09-2000  
TC/A.U. : 2686  
Examiner : Nghi H. Ly

Confirmation No. 2790

Docket No. : 003239.P059  
Customer No. : 8791

**APPEAL BRIEF**

Mail Stop Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits the following Appeal Brief pursuant to 37 C.F.R. § 41.37 for consideration by the Board of Patent Appeals and Interferences. Applicant also submits herewith our check number 290 in the amount of \$500.00 to cover the cost of filing the opening brief as required by 37 C.F.R. §41.20(b). Please charge any additional fees or credit any overpayment to our deposit Account No. 02-2666. A duplicate copy of the Fee Transmittal is enclosed for this purpose.

01/31/2006 BABRAHA1 00000028 09522325

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**I. REAL PARTY IN INTEREST**

The real party in interest is the assignee, Nortel Networks Limited.

**II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences known to the appellants, the appellants' legal representative, or assignee, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. STATUS OF CLAIMS**

Claims 1-120 of the present application are pending and remain rejected. The Applicant hereby appeals the rejection of claims 1-120.

**IV. STATUS OF AMENDMENTS**

On June 9, 2005, the Applicant filed response to an Office Action dated March 18, 2005. The Examiner issued a Final Office Action on September 23, 2005. On November 29, 2005, the Applicant filed a Notice of Appeal in response to the Final Office Action.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

**1. Independent claims 1, 11, 21, 38, 54, 57, 60, 61, 71, 81, 91, 101, and 111:**

The present invention is a method and apparatus to provide remote communication using network telephony. In a transmitter, an activation message is decoded to generate an activation command. The activation message is sent from an activator via a communication medium in response to a telephony call. An information message is transmitted, responsive to the activation command, to a receiver using a communication protocol. In a receiving unit, an activation message is decoded to generate an activation command. The activation message is sent in response to a telephony call. An information message is received, responsive to the activation command. The information message is sent from a transmitter according to a communication protocol via a communication medium<sup>1</sup>.

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<sup>1</sup> See Specification, page 4 (lines 2-11).

A system 100 includes a satellite network 110, N transmitters 120<sub>1</sub> to 120<sub>N</sub>, a communication medium 130, a network component 140, a network 150, a request subsystem 160, a transaction processor 170, and a network server 180<sup>2</sup>.

The transmitters 120<sub>1</sub> to 120<sub>N</sub> broadcast information to the network component 140 via the communication medium 130. The information from the transmitters 120<sub>1</sub> to 120<sub>N</sub> are embedded in signals 125<sub>1</sub> to 125<sub>N</sub>, respectively. The transmitters 120<sub>1</sub> to 120<sub>N</sub> broadcast the information upon receiving an activation request 135 from the request subsystem 160. In one embodiment, the transmitters 120<sub>1</sub> to 120<sub>N</sub> are geographically dispersed to form a distributed location broadcast system<sup>3</sup>.

The network component 140 is a unit or subsystem that can be networked with other networkable components via the network 150. The network component 140 receives and processes the information transmitted or broadcast by at least one of the transmitters 120<sub>1</sub> to 120<sub>N</sub>. The network 140 sends the processed information to other components connected to the network 150 such as the transaction processor 170 or the network server 180<sup>4</sup>.

The request subsystem 160 generates the activation request or message 135 to be sent to the transmitters to request for information in response to a telephony call 165<sup>5</sup>.

The transmitter 120 includes a reception unit 210, a transmission unit 220, a broadcast information 230, an information message 240, a location interface 255, a processor 280, and a memory 290<sup>6</sup>.

The reception unit 210 includes a transmitter decoder 212. The transmitter decoder 212 receives and decodes the activation request/ message 135. The reception unit 210 generates an activation command 215 to the transmission unit 220. The transmission unit 220 receives the activation command 215 and retrieves the broadcast information 230. The transmission unit 220 includes a modulator 222 which modulates the broadcast information 230 according to a pre-defined communication protocol<sup>7</sup>. The information message 230 includes a location identifier 250 that identifies the location of the transmitter 120 or the general location where the transmitter 120 is located<sup>8</sup>.

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<sup>2</sup> See Specification, page 4 (lines 32-33), page 5 (lines 1-2); Figure 1 (element 100).

<sup>3</sup> See Specification, page 9 (lines 6-15).

<sup>4</sup> See Specification, page 9 (lines 18-23).

<sup>5</sup> See Specification, page 10 (lines 13-14).

<sup>6</sup> See Specification, page 11 (lines 18-21); Figure 2 (element 120).

<sup>7</sup> See Specification, page 13 (lines 8-18); Figure 2 (element 210).

<sup>8</sup> See Specification, page 15 (lines 1-3); Figure 2 (element 230).

The network component 140 includes a receiving unit 310, a location determination unit 320, a network interface 330, a receiver decoder 340, a receiver activator 350, a processor 360, and a memory 370<sup>9</sup>.

The receiving unit 310 receives the signal 125 sent from the transmitters 120. The receiving unit 310 is activated by an activation command 315 from the receiver decoder 340 and is enabled to receive the signal 125 carrying the broadcast information 230<sup>10</sup>.

The receiving unit 310 includes a demodulator 312 to demodulate the received signal 125 and provides the extracted information message 315. The extracted information message 315 is essentially the same as the information message 240<sup>11</sup>.

## 2. Claims 5-6, 15-16, 23, 37 and 53:

The transmission unit 220 includes a modulator 222 which modulates the broadcast information 230 according to a pre-defined communication protocol that is designed to be compatible with the network component 140. The modulated information message 230 becomes one of the signals 125<sub>1</sub> to 125<sub>N</sub> to be transmitted over the communication medium 130<sup>12</sup>.

In one embodiment, the signal modulation uses a pseudo random binary sound (PRBS) technique. The PRBS codes can generate many different code sequences and therefore can help differentiate many different locations<sup>13</sup>.

The receiving unit 310 includes a demodulator 312 to demodulate the received signal 125 and provides the extracted information message 315<sup>14</sup>.

The transmitter 120 is a device that transmits a signal 125 upon receiving the activation request 135 or continuously without request<sup>15</sup>.

The transaction processor 170 performs transactional processing tasks in a transaction for a transactional entity 175. The transaction may be a commercial or a financial transaction. The location information can be automatically sent from one of the transmitters 120<sub>1</sub> to 120<sub>N</sub> to the transaction processor 170 via the network 150 when the person makes a telephony call 165<sup>16</sup>.

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<sup>9</sup> See Specification, page 16 (lines 11-14); Figure 3 (element 140).

<sup>10</sup> See Specification, page 16 (lines 15-18).

<sup>11</sup> See Specification, page 16 (lines 18-20).

<sup>12</sup> See Specification, page 13 (lines 16-20).

<sup>13</sup> See Specification, page 13 (lines 23-25).

<sup>14</sup> See Specification, page 16 (lines 18-19); Figure 3 (element 312).

<sup>15</sup> See Specification, page 11 (lines 22-23).

## **VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

1. Claims 1-4, 7-14, 17-22, 24-36, 38-52 and 54-120 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,124,806 issued to Cunningham et al. ("Cunningham") in view of U.S. Patent No. 5,835,907 issued to Newman ("Newman").
2. Claims 5-6, 15-16, 23, 37 and 53 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cunningham in view of Newman and further in view of U.S. Patent No. 5,544,225 issued to Kennedy, III et al. ("Kennedy").

## **VII. ARGUMENTS**

### **A. Claims 1-4, 7-14, 17-22, 24-36, 38-52 and 54-120 Are Not Obvious Over Cunningham In View of Newman.**

In the Final Office Action, the Examiner rejected claims 1-4, 7-14, 17-22, 24-36, 38-52 and 54-120 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,124,806 issued to Cunningham et al. ("Cunningham") in view of U.S. Patent No. 5,835,907 issued to Newman ("Newman") (Final Office Action, page 2, Paragraph No. 2). Applicant respectfully traverses the rejection and contends that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP §2143, p. 2100-129 (8th Ed., Rev. 2, May 2004)*. Applicants respectfully contend that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

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<sup>16</sup> See Specification, page 10 (lines 22-24); page 11 (lines 1-3); Figure 1 (element 170).



In the Final Office Action, the Examiner rejected claims 1-4, 7-14, 17-22, 24-36, 38-52 and 54-120 under 35 U.S.C. §103(a) as being unpatentable over Cunningham in view of Newman. Applicant respectfully disagrees.

The Cunningham reference is directed to the fields of automatic meter reading of electric, gas, water meters and other systems, automatic reading of flow data, monitoring of such usage, and distribution of information thereon. “The need for near real-time information is becoming critical ...” (Cunningham, col. 1, lines 14-21, emphasis added). Cunningham discloses a wide area remote telemetry to obtain information on consumer utility usage. A sensor interface module sends the customer demand and usage information to data collection modules over unlicensed radio frequency bands (Cunningham, col. 4, lines 54-58). The data collection modules transmit the information over a data module connection to a network system (Cunningham, col. 4, lines 58-62). The network system forwards the information to a host module where the information is stored and processed (Cunningham, col. 7, lines 19-27).

Newman discloses an emergency personal communication services (PCS) system for identification and notification of a subscriber’s location. An emergency PCS device receives signal transmission from several GPS satellites, converts the received signals information identifying a location of the emergency PCS device, and transmits the location and a code to a network over a wireless medium (Newman, col. 2, lines 21-29). If the emergency distress signal has not been activated, a voice processing system provides on-demand information on the subscriber’s location to a telephone caller (Newman, col. 2, lines 43-46). There is no activation message being sent in response to a telephony call.

Cunningham and Newman, taken alone or in any combination, do not disclose, suggest, or render obvious (1) a decoder to decode an activation message, the activation message being sent from an activator in response to a telephony call, the decoder generating an activation command, and a transmitter/receiver to transmit/receive an information message responsive to the activation command, as recited in independent claims 1 and 11, 61, 71, 81, 91, 101, and 111, (2) each transmitter comprising a transmission unit to broadcast a signal modulated from an information message containing respective location information in response to a telephony call, as recited in independent claim 21, (3) receiving a location information request, the location information request requiring a location information, generating at least one data packet comprising the

location information; and transmitting the at least one data packet in response to the location information request, as recited in claim 38, (4) a networkable component comprising a receiver/ means for receiving location information in response to a telephony call, a processor/means for processing the location information, and a network interface/interface means for transmitting the location information over a network, as recited in independent claims 54 and 57, (5) a networkable component comprising a location sensor to provide location information in response to a telephony call, a determination unit coupled to the sensor, the determination unit to determine the location information, and a network interface coupled to the determination unit to selectively transmit the location information over a network, as recited in claim 60.

Specifically, Cunningham does not teach or suggest the claimed subject matter. Without limiting the generality of the foregoing, Cunningham does not teach or suggest: (1) a decoder to decode; (2) an activation message; (3) sent from an activator; (4) in response to a telephony call; and (5) the decoder generating an activation command.

Applicant contends that Cunningham merely discloses the transmission of the usage information from the sensor interface module to the data collection module, then to the host module, and finally to the customer interface. As emphasized above, Cunningham's intended purpose is to do this automatically, in order to provide near real time information regarding customer utility usage (see above, and also Cunningham, col. 4, lines 46-55), and **NOT** in response to a telephony call. Indeed, the Examiner has admitted that Cunningham does not teach that the activation is in response to a telephony call. (Office Action, page 3, lines 4-5). Therefore, Cunningham is teaching away from the invention. First, Cunningham does not disclose or suggest sending an activation message in response to a telephony call. In the Office Action, the Examiner states that the sensor interface module is an activator which transmits the activation message (the information over unlicensed radio frequency bands (Office Action, page 2, referring to Cunningham, col. 4, lines 58-62 and lines 56-58)). Applicant respectfully disagrees. The rejection fails to establish how the sensor interface module is an activator. More importantly, the sensor interface module sends the customer demand and usage information, and not an activation message as claimed. This is explicitly stated in the sentence immediately preceding the passage relied on in the rejection. Quoting from Cunningham, col. 4, lines 54-57:

“The sensor interface module will constantly monitor individual customer demand and usage to gather information for the monitoring system. The sensor interface module will send this information to the data collection module”(Emphasis added.)

Second, Cunningham, does not disclose or suggest transmitting a signal modulated from an information message to a receiver in response to the activation command.

The sensor interface module or the data collection modules disclosed in Cunningham are neither decoder nor activator. The sensor interface module merely sends customer demand and usage information. The data collection modules merely transmit the received demand/usage information to a network. There is no activation message in response to a telephony call.

In the Final Office Action, the Examiner contends that it is inherent that the data collection module 10 includes a decoder to decode the received information or messages or generating an activation command (Final Office Action, page 25, Paragraph No. 4). Applicant respectfully disagrees.

The fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). “To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art.” Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). Here, the Examiner did not provide a basis in fact and/or technical reasoning to reasonably support the determination that a decoder necessarily is required in the data collection module. The data collection module merely forwards information received from a multi-path sensor interface module (Cunningham, col. 6, lines 55-65) or transmits the

information received from the sensor interface module to a network system (Cunningham, col. 7, lines 19-21). There is no technical basis that the data collection module has to decode the information received from the sensor interface module. Furthermore, there is no technical basis for the characterization of the information from the sensor interface module to be an activation message.

In addition, the combination of Cunningham and Newman is improper. For the Patent Office to combine references in an obviousness analysis, the Patent Office must do two things. First, the Patent Office must articulate a motivation to combine the references, and second, the Patent Office must support the articulated motivation with actual evidence. *In re Dembiczak*, 175 F.3d 994,999 (Fed. Cir. 1999). While the range of sources for the motivation is broad, the range of available sources does not diminish the requirement for actual evidence. *Id.*

In the rejection, the Examiner states: “*It would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teaching of Newman into the teaching of Cunningham, so the remote metering can also be manually activated by a phone call.*” (Final Office Action, page 3). However, this is a mere assertion based on hindsight and does not establish a motivation or suggestion to combine the cited references. On page 27 of the final office action, the examiner simply states that the motivation can be found in the references themselves, without demonstrating where or how such a motivation can be found.

In order to prevent hindsight analysis, there must be some motivation or suggestion to combine specific prior art in such a way as to arrive to the combination claimed in the patent at issue. See, e.g., Yamanouchi Pharmaceutical Co., Ltd. v. Danbury Pharmacal, Inc., 231 F.3d 1339, 1343 (Fed. Cir. 2000): “*the suggestion to combine requirement stands as a critical safeguard against hindsight analysis and rote application of the legal test of obviousness.*”, and Ecolochem, Inc. v. Southern California Edison Co., 227 F.3d at 1371-1372 (Fed. Cir. 2000), “*Combining prior art references without evidence or a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.*”

Accordingly, Applicants respectfully contend that the examiner has failed to establish a prima facie case of obviousness as the examiner has not met the burden of

articulating a motivation to combine the references, let alone supporting the articulated motivation with actual evidence.

This is not surprising as there is no motivation to combine. These two references are in different fields of endeavor, and solve different problems. An ordinary worker skilled in the art of automatic utility meter readings would not look to the a reference dealing with location of a terminal during an emergency call, and vice a versa. As stated, the intended purpose of Cunningham is to constantly monitor and automatically provide near real time information on an ongoing basis. Newman is only relevant to emergency calls, which happen infrequently, and therefore are only used on an as needed basis. Furthermore, the intended purpose of Newman is to provide location information. This is simply irrelevant to Cunningham, as the location of the sensors is fixed and known.

In any event, Newman does not disclose the activation message being sent from an activator in response to a telephony call. Newman merely discloses a voice processing system to provide the information.

In the Final Office Action, the Examiner states that Newman teaches sending an activation message in response to a telephone call, citing Newman, col. 2, lines 43-49 (Final Office Action, page 7, last paragraph; page 26, lines 12-14). For ease of reference, the cited paragraph is copied below.

“... after the conversion and storage, emergency services and/or a designated contact are automatically notified if an emergency distress signal has been activated by the subscriber. Alternatively, if the emergency distress signal has not been activated, a voice processing system provides on-demand information on the subscriber's location to a telephone caller who supplies the emergency PCS device's code. The voice processing system interfaces with the telephone caller, as well as the database via the computer network.” (Newman, col. 2, lines 40-48.)

As clearly seen from the above, Newman merely discloses that if an emergency distress signal has not been activated, a voice processing system provides on-demand information on the subscriber's location to a telephone caller who supplies the emergency PCS device's code. On-demand information on the subscriber's location is not an activation message.

Furthermore, Cunningham cannot be modified according to the teachings of Newman because, as already stated, the stated purpose of Cunningham is to automatically send near real time information to the host, not sending information to a server in response to a telephone call. Modifying Cunningham would render the technique unsatisfactory for its intended purpose. Therefore, there is no suggestion or motivation to make the proposed modifications.

If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01.

The above arguments are even more applicable to the rejection of claim 7 and other claims which specify the information message contains location information. As stated above, location information is simply irrelevant to Cunningham, as the location of the sensors is fixed and known. Thus there would be no reason for a person skilled in either art to be motivated to combine the two references.

In the Final Office Action, regarding claims 21, 38, 54, and 60, the Examiner contends that Cunningham discloses each transmitter comprising a transmission unit to broadcast a signal modulated from an information message wherein the data collection module transmits the information to the host module over the commercially available information transmission systems, citing Cunningham, col. 4, lines 60-63 (Final Office Action, pages 11; page 17, last paragraph; page 20; page 21). Applicant respectfully disagrees. The data collection module merely gathers the information from the sensor interface module which monitors individual customer demand and usage (Cunningham, col. 4, lines 54-56). The sensor interface module is attached to gas, electric, and water meters (Cunningham, col. 7, lines 32-34). Therefore, the information sensed by the sensor interface module is not location information. In addition, as discussed above, Newman does not disclose or suggest broadcasting a signal modulated from an information message containing respective location information in response to a telephony call. The emergency device in Newman periodically receives coordinates from the GPS satellites and sends its location information to the computer via the PCS network (Newman, col. 3, lines 34-36). The device, therefore, either periodically sends the information, or when an emergency

distress button is pressed (Newman, col. 3, lines 41-46), not in response to a telephony call.

In the present invention, the cited references do not expressly or implicitly suggest sending an activation message in response to a telephone call and transmitting/receiving an information message responsive to an activation command. In addition, the Examiner failed to present a convincing line of reasoning as to why a combination of Cunningham, and Newman is an obvious application of such an automatic communication mode.

There is no motivation to combine Cunningham and Newman because neither of them addresses the problem of automatic remote communication. There is no teaching or suggestion that a decoder to decode activation message is present. Cunningham, read as a whole, does not suggest the desirability of decoding an activation message, sending the activation message in response to a telephone call, generating a command, and transmitting/receiving an information message responsive to the command.

**B. Claims 5-6, 15-16, 23, 27 and 53 Are Not Obvious Over Cunningham In View of Newman and Further In View of Kennedy.**

In the Final Office Action, the Examiner rejected claims 5-6, 15-16, 23, 37 and 53 under 35 U.S.C. §103(a) as being unpatentable over Cunningham in view of Newman and further in view of U.S. Patent No. 5,544,225 issued to Kennedy, III et al. ("Kennedy") (Final Office Action, page 23, Paragraph No. 3). Applicant respectfully disagrees.

Cunningham discloses a wide area remote telemetry to obtain information on consumer utility usage, and Newman discloses an emergency personal communication services (PCS) system for identification and notification of a subscriber's location, as discussed above.

Kennedy discloses data messaging in a cellular communications network. Voice/data links support transmission of data over a voice channel using a modem, dual-tone multifrequency (DTMF) tones (Kennedy, col. 6, lines 1-3).

Cunningham, Newman, and Kennedy, taken alone or in any combination, do not disclose, suggest, or render obvious (1) a decoder to decode an activation message, (2) the activation message being sent from an activator in response to a telephony call, (3) the decoder generating an activation command, (4) a transmitter/receiver to transmit/receive an information message responsive to the activation command, (5) a modulator to modulate

the information message according to a modulating as recited in claims 4 and 14, from which claims 5 and 15 depend, (6) the modulating scheme is compatible with a sound signal, as recited in claims 5, 15, (7) a transmission unit to broadcast a signal modulated from an information message containing respective location information in response to a telephony call as recited in claim 21 from which claim 23 depends, (8) the transmission unit broadcasting the respective location information on a substantially continuous basis, as recited in claim 23, (9) an e-commerce transaction processor wherein the location event is generated by the e-commerce transaction processor, as recited in claim 37, and (10) the networkable component comprises an association with a commercial transaction, as recited in claim 53.

There is no motivation to combine Cunningham, Newman, and Kennedy because none of them addresses the problem of automatic remote communication. There is no teaching or suggestion that a decoder to decode activation message is present. Cunningham, read as a whole, does not suggest the desirability of decoding an activation message, sending the activation message in response to a telephone call, generating a command, and transmitting/receiving an information message responsive to the command.

As discussed above, Cunningham and Newman, either taken alone or in any combination, do not disclose or suggest the elements of the independent claims from which the rejected claims 5-6, 15-16, 23, 37 and 53 depend. As discussed above, Cunningham cannot be modified according to the teachings of Newman because the stated purpose of Cunningham is to automatically send near real-time information. Therefore, Cunningham cannot be modified according to the teachings of Newman. Accordingly, a combination of Cunningham, Newman, and Kennedy is improper.

Furthermore, Kennedy merely discloses voice/data links support transmission of data over a voice channel using a modem, dual tones multi-frequency tones (Kennedy, col. 6, lines 1-3). Kennedy does not disclose or suggest transmitting a signal modulated from an information message in response to the activation command. The data over a voice channel does not correspond to an information message.

In the Final Office Action, regarding claim 23, the Examiner contends that Cunningham as modified by Newman and Kennedy teaches the transmission unit broadcasts the respective location information on a substantially continuous basis, citing Newman, col. 1, lines 6-11 and col. 3, lines 19-30 (Final Office Action, page 24, last



paragraph). Applicant respectfully disagrees. Newman merely discloses sending the location information to an emergency service at its request (Newman, col. 1, lines 6-10) or automatically to emergency services (Newman, col. 3, lines 24-25), not in response to a telephony call.

Regarding claim 37, the Examiner contends that Cunningham as modified by Newman and Kennedy teaches an e-commerce transaction processor, citing Newman, col. 1, lines 6-11 and col. 3, lines 19-30 (Final Office Action, page 25, first paragraph). Applicant respectfully disagrees. As discussed above, Newman merely discloses sending location information to an emergency service. This does not involve an e-commerce transaction processor.

Regarding claim 53, the Examiner contends that the networkable component comprises an association with a commercial transaction, citing Figure 1 of Kennedy (Final Office Action, page 25, second paragraph). Applicant respectfully disagrees. Figure 1 of Kennedy merely shows a communication system including cellular systems, clearing house, platforms, and hosts, not an association with a commercial transaction.

The Examiner failed to establish a prima facie case of obviousness and failed to show there is teaching, suggestion or motivation to combine the references. When applying 35 U.S.C. 103, the following tenets of patent law must be adhered to: (A) The claimed invention must be considered as a whole; (B) The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; (C) The references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention; and (D) Reasonable expectation of success is the standard with which obviousness is determined. Hodosh v. Block Drug Col. Inc., 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n.5 (Fed. Cir. 1986). “When determining the patentability of a claimed invention which combined two known elements, ‘the question is whether there is something in the prior art as a whole suggest the desirability, and thus the obviousness, of making the combination.’” In re Beattie, Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 1462, 221 USPQ (BNA) 481, 488 (Fed. Cir. 1984). To defeat patentability based on obviousness, the suggestion to make the new product having the claimed characteristics must come from the prior art, not from the hindsight knowledge of the invention. Interconnect Planning Corp. v. Feil, 744 F.2d 1132, 1143, 227 USPQ (BNA) 543, 551

(Fed. Cir. 1985). To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the Examiner to show a motivation to combine the references that create the case of obviousness. In other words, the Examiner must show reasons that a skilled artisan, confronted with the same problems as the inventor and with no knowledge of the claimed invention, would select the prior elements from the cited prior references for combination in the manner claimed. In re Rouffet, 149 F.3d 1350 (Fed. Cir. 1996), 47 USPQ 2d (BNA) 1453. "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or implicitly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 USPQ 972, 973. (Bd.Pat.App.&Inter. 1985). The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. In re Mills, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Furthermore, although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." In re Mills 916 F.2d at 682, 16 USPQ2d at 1432; In re Fitch, 972 F.2d 1260, 23 USPQ2d 1780 (Fed. Cir. 1992).

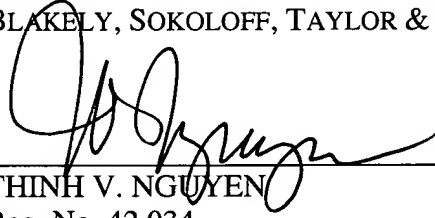
Therefore, Applicant believes that independent claims 1, 11, 21, 38, 54, 57, 60, 61, 71, 81, 91, 101, 111 and their respective dependent claims are distinguishable over the cited prior art references.

### **VIII. CONCLUSION**

Applicant respectfully requests that the Board enter a decision overturning the Examiner's rejection of all pending claims, and holding that the claims are neither anticipated nor rendered obvious by the prior art.

Respectfully submitted,

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## **IX. CLAIMS APPENDIX**

The claims of the present application which are involved in this appeal are as follows:

1. (previously presented) An apparatus comprising:  
a decoder to decode an activation message, the activation message being sent from an activator via a communication medium in response to a telephony call, the decoder generating an activation command; and  
a transmitting unit coupled to the decoder to transmit a signal modulated from an information message to a receiver using a communication protocol, in response to the activation command.
2. (original) The apparatus of claim 1 wherein the receiver is coupled to a server, the server embedding the information message in network data to be sent over a network.
3. (original) The apparatus of claim 1 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.
4. (original) The apparatus of claim 1 wherein the transmitting unit comprises a modulator to modulate the information message according to a modulating scheme.
5. (original) The apparatus of claim 4 wherein the modulating scheme is compatible with a sound signal.
6. (original) The apparatus of claim 5 wherein the modulating scheme uses a pseudo random binary sound (PRBS).
7. (previously presented) The apparatus of claim 1 wherein the information message includes a location identifier corresponding to location of the transmitting unit.

8. (original) The apparatus of claim 7 wherein the location identifier includes global positioning system (GPS) information.

9. (previously presented) The apparatus of claim 7 wherein the telephony call is made by a person located in proximity of the location of the transmitting unit.

10. (original) The apparatus of claim 7 wherein the telephony call is an emergency call using an emergency call number.

11. (previously presented) An apparatus comprising:  
a decoder to decode an activation message, the activation message being sent from an activator in response to a telephony call, the decoder generating an activation command;  
and

a receiving unit coupled to the decoder to receive a signal containing an information message responsive to the activation command, the information message being sent from a transmitter according to a communication protocol via a communication medium.

12. (original) The apparatus of claim 11 wherein the receiving unit is coupled to a server, the server embedding the information message in network data to be sent over a network.

13. (original) The apparatus of claim 12 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

14. (previously presented) The apparatus of claim 13 wherein the receiving unit comprises a demodulator to demodulate the signal according to a demodulating scheme.

15. (original) The apparatus of claim 14 wherein the demodulating scheme is compatible with a sound signal.

16. (original) The apparatus of claim 15 wherein the demodulating scheme uses a pseudo random binary sound (PRBS).

17. (original) The apparatus of claim 11 wherein the information message includes a location identifier corresponding to location of the transmitting unit.

18. (original) The apparatus of claim 17 wherein the location identifier includes global positioning system (GPS) information.

19. (original) The apparatus of claim 18 wherein the telephony call is made by a person located in proximity of the transmitter.

20. (original) The apparatus of claim 19 wherein the telephony call is an emergency call using an emergency call number.

21. (previously presented) A network comprising a plurality of commonly coupled location transmitters, each transmitter comprising a transmission unit to broadcast a signal modulated from an information message containing respective location information in response to a telephony call.

22. (original) The network of Claim 21, wherein the transmission unit of a transmitter broadcasts the respective location information on a substantially periodic basis.

23. (original) The network of Claim 21, wherein the transmission unit of a transmitter broadcasts the respective location information on a substantially continuous basis.

24. (previously presented) The network of Claim 21, wherein the transmission unit of a transmitter broadcasts the respective location information responsive to an activation request upon receipt of the telephony call.

25. (original) The network of Claim 24, wherein at least one of the plurality of transmitters comprises

a reception unit coupled to the transmission unit of the at least one of the plurality of transmitters, the reception unit to receive the activation request and to notify the transmission unit of such receipt.

26. (original) The network of Claim 21, wherein each transmitter further comprises a reception unit coupled to the transmission unit to receive an activation request and to notify the transmission unit of such receipt; and wherein the reception units of a set of the transmitters to receive the activation request at substantially the same time.

27. (original) The network of Claim 26, wherein the set of the transmitters comprises all of the plurality of transmitters in the network.

28. (original) The network of Claim 26, wherein the set of the transmitters comprises less than all of the plurality of transmitters in the network.

29. (original) The network of Claim 21, wherein the transmitters are geographically dispersed to form a distributed location broadcast system.

30. (original) The network of Claim 21, wherein the transmission unit of a transmitter broadcasts respective broadcast information in a format consistent with at least one of an identification tag, an absolute location, and a relative location.

31. (original) The network of Claim 21, further comprising:  
a network component capable of coupling to a first transmitter of the plurality of transmitters to receive and process the respective location information broadcast by the first transmitter.

32. (original) The network of Claim 24, further comprising:  
a server coupled to the plurality of transmitters to selectively issue the activation request to the plurality of transmitters.

33. (original) The network of Claim 24, further comprising:

a network component capable of sensing at least one of the plurality of transmitters, the network component comprising:

a sensor capable of at least intermittent coupling to a first transmitter of the plurality of transmitters to receive the respective location broadcast by the first transmitter, a location determination unit coupled to the sensor to process the received respective location information, and a network interface to externally issue the respective location information in accordance with a packet data format.

34. (original) The network of Claim 33, further comprising:

a server coupled to the plurality of transmitters to selectively issue the activation request to the plurality of transmitters responsive to a location event; and

a packet network interposing the network interface of the network component and the server, the packet network to bear the packetized, respective location information to said server.

35. (original) The network of Claim 34, wherein the location event is generated by the network component.

36. (original) The network of Claim 35, wherein the location event comprises an emergency call.

37. (original) The network of Claim 34, further comprising an e-commerce transaction processor coupled to the packet network, wherein the location event is generated by the e-commerce transaction processor.

38. (original) A method of locating a networkable component, comprising:  
receiving a location information request, the location information request requiring a location information;  
generating at least one data packet comprising the location information; and  
transmitting the at least one data packet in response to the location information request.



39. (original) The method of claim 38, wherein the data packet complies with Internet Protocol.

40. (original) The method of claim 38, wherein the receiving of the location information is performed by a receiver.

41. (original) The method of claim 38, further comprising:  
storing the location information in a store for storing location information.

42. (original) The method of claim 38, further comprising:  
receiving the location information from a location information receiving device.

43. (original) The method of claim 42, wherein the location information receiving device is a Global Positioning System receiver.

44. (original) The method of claim 38, wherein the location information is an absolute reference to a location.

45. (original) The method of claim 44, wherein the absolute reference comprises geographic coordinates.

46. (original) The method of claim 44, wherein the absolute reference contains a location address.

47. (original) The method of claim 44, wherein the absolute reference comprises Global Positioning System data.

48. (original) The method of claim 38, wherein the location information comprises a relative reference to a location.

49. (original) The method of claim 38, wherein the location information comprises a predetermined code associated with a location.

50. (original) The method of claim 38, wherein the location information request is generated in response to an emergency telephony call.
51. (original) The method of claim 38, wherein the location information request originates from a networkable component.
52. (original) The method of claim 51, wherein the networkable component is an emergency server.
53. (original) The method of claim 51, wherein the networkable component comprises an association with a commercial transaction.
54. (previously presented) A networkable component comprising:  
a receiver for receiving location information in response to a telephony call;  
a processor for processing the location information; and  
a network interface for transmitting the location information over a network.
55. (original) The networkable component of claim 54 wherein the location information is one of a pre-determined location information and a global positioning system (GPS) information.
56. (original) The networkable component of claim 55 wherein the telephony call is one of an emergency call, a commercial transaction call, and an intrusive call.
57. (previously presented) A networkable component comprising:  
means for receiving location information in response to a telephony call;  
means for processing the location information; and  
interface means for transmitting the location information.
58. (original) The networkable component of claim 57 wherein the location information is one of a pre-determined location information and a global positioning system (GPS) information.

59. (original) The networkable component of claim 58 wherein the telephony call is one of an emergency call, a commercial transaction call, and an intrusive call.

60. (previously presented) A networkable component comprising:  
a location sensor to provide location information in response to a telephony call;  
a determination unit coupled to the sensor, the determination unit to determine the location information; and  
a network interface coupled to the determination unit to selectively transmit the location information over a network.

61. (previously presented) A method comprising:  
decoding an activation message to generate an activation command, the activation message being sent from an activator via a communication medium in response to a telephony call; and  
transmitting a signal modulated from an information message responsive to the activation command, by a transmitting unit, to a receiver using a communication protocol.

62. (original) The method of claim 61 further comprising embedding the information message in network data to be sent over a network.

63. (original) The method of claim 61 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

64. (original) The method of claim 61 wherein transmitting comprises modulating the information message according to a modulating scheme.

65. (original) The method of claim 64 wherein the modulating scheme is compatible with a sound signal.

66. (original) The method of claim 64 wherein the modulating scheme uses a pseudo random binary sound (PRBS).

67. (original) The method of claim 61 wherein the information message includes a location identifier corresponding to location of the transmitting unit.

68. (original) The method of claim 67 wherein the location identifier includes global positioning system (GPS) information.

69. (original) The method of claim 61 wherein the telephony call is made by a person located in proximity of the location of the transmitter.

70. (original) The method of claim 69 wherein the telephony call is an emergency call using an emergency call number.

71. (previously presented) A method comprising:  
decoding an activation message to generate an activation command, the activation message being sent from an activator in response to a telephone call; and  
receiving a signal containing an information message responsive to the activation command, the signal being sent from a transmitter according to a communication protocol.

72. (original) The method of claim 71 further comprises embedding the information message in network data to be sent over a network.

73. (original) The method of claim 72 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

74. (original) The method of claim 73 wherein receiving comprises demodulating the information message according to a demodulating scheme.

75. (original) The method of claim 74 wherein the demodulating scheme is compatible with a sound signal.

76. (original) The method of claim 75 wherein the demodulating scheme uses a pseudo random binary sound (PRBS).

77. (original) The method of claim 71 wherein the information message includes a location identifier corresponding to location of the transmitter.

78. (original) The method of claim 77 wherein the location identifier includes global positioning system (GPS) information.

79. (original) The method of claim 78 wherein the telephony call is made by a person located in proximity of the transmitter.

80. (original) The method of claim 76 wherein the telephony call is an emergency call using an emergency call number.

81. (previously presented) A computer program product comprising:  
a machine useable medium having computer program code embedded therein, the computer program product having:  
computer readable program code for decoding an activation message to generate an activation command, the activation message being sent from an activator via a communication medium in response to a telephony call; and  
computer readable program code for transmitting a signal modulated from an information message, responsive to the activation command by a transmitting unit, to a receiver using a communication protocol.

82. (original) The computer program product of claim 81 further comprises computer readable program code for embedding the information message in network data to be sent over a network.

83. (original) The computer program product of claim 82 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

84. (original) The computer program product of claim 83 wherein the computer readable program code for transmitting comprises computer readable program code for modulating the information message according to a modulating scheme.

85. (original) The computer program product of claim 84 wherein the modulating scheme is compatible with a sound signal.

86. (original) The computer program product of claim 85 wherein the modulating scheme uses a pseudo random binary sound (PRBS).

87. (original) The computer program product of claim 81 wherein the information message includes a location identifier corresponding to location of the transmitting unit.

88. (original) The computer program product of claim 82 wherein the location identifier includes global positioning system (GPS) information.

89. (original) The computer program product of claim 88 wherein the telephony call is made by a person located in proximity of the location of one of the decoder and the transmitter.

90. (original) The computer program product of claim 89 wherein the telephony call is an emergency call using an emergency call number.

91. (previously presented) A computer program product comprising:  
a machine useable medium having computer program code embedded therein, the computer program product having:

computer readable program code for decoding an activation message to generate an activation command, the activation message being sent from an activator in response to a telephony call; and

computer readable program code for receiving a signal containing an information message, responsive to the activation command, the information message being sent from a transmitter according to a communication protocol.

92. (original) The computer program product of claim 91 further comprises computer readable program code for embedding the information message in network data to be sent over a network.

93. (original) The computer program product of claim 92 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

94. (original) The computer program product of claim 93 wherein the computer readable program code for receiving comprises demodulating the information message according to a demodulating scheme.

95. (original) The computer program product of claim 94 wherein the receiver is a tone receiver compatible with the demodulating scheme.

96. (original) The computer program product of claim 95 wherein the demodulating scheme uses a pseudo random binary sound (PRBS).

97. (original) The computer program product of claim 91 wherein the information message includes a location identifier corresponding to location of the transmitter.

98. (original) The computer program product of claim 97 wherein the location identifier includes global positioning system (GPS) information.

99. (original) The computer program product of claim 98 wherein the telephony call is made by a person located in proximity of the location of the transmitting unit.

100. (original) The computer program product of claim 99 wherein the telephony call is an emergency call using an emergency call number.

101. (previously presented) A system comprising:  
an activator to transmit an activation message in response to a telephony call; and  
a transmitter to communicate with the activator via a communication medium, the transmitter comprising:

a decoder to decode the activation message, the decoder generating an activation command, and  
a transmitting unit coupled to the decoder to transmit a signal modulated from an information message, responsive to the activation command, to a receiver using a communication protocol.

102. (original) The system of claim 101 wherein the receiver is coupled to a server, the server embedding the information message in network data to be sent over a network.

103. (original) The system of claim 102 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

104. (original) The system of claim 103 wherein the transmitting unit comprises a modulator to modulate the information message according to a modulating scheme.

105. (original) The system of claim 104 wherein the modulating scheme is compatible with a sound signal.

106. (original) The system of claim 105 wherein the modulating scheme uses a pseudo random binary sound (PRBS).

107. (original) The system of claim 101 wherein the information message includes a location identifier corresponding to location of the transmitter.

108. (original) The system of claim 107 wherein the location identifier includes global positioning system (GPS) information.

109. (original) The system of claim 108 wherein the telephony call is made by a person located in proximity of the location of one of the decoder and the transmitter.



110. (original) The system of claim 109 wherein the telephony call is an emergency call using an emergency call number.

111. (previously presented) A system comprising:  
an activator to transmit an activation message in response to a telephony call; and  
a receiver coupled to the server, the receiver comprising:  
a decoder to decode the activation message, the decoder generating an activation command, and  
a receiving unit coupled to the decoder to receive a signal containing an information message responsive to the activation command, the information message being sent from a transmitter according to a communication protocol via a communication medium.

112. (original) The system of claim 111 further comprises a server coupled to the receiver to embed the information message in network data to be sent over a network.

113. (original) The system of claim 112 wherein the communication protocol uses one of a multi-frequency tone, an ultra-red signal, a microwave signal, and an electromagnetic signal.

114. (original) The system of claim 113 wherein the receiver comprises a demodulator to demodulate the information message according to a demodulating scheme.

115. (original) The system of claim 114 wherein the demodulating scheme is compatible with a sound signal.

116. (original) The system of claim 115 wherein the demodulating scheme uses a pseudo random binary sound (PRBS).

117. (original) The system of claim 111 wherein the information message includes a location identifier corresponding to location of the transmitter.

118. (original) The system of claim 117 wherein the location identifier includes global positioning system (GPS) information.

119. (original) The system of claim 118 wherein the telephony call is made by a person located in proximity of the location of the transmitter.

120. (original) The system of claim 119 wherein the telephony call is an emergency call using an emergency call number.

**XI. EVIDENCE APPENDIX**

None

**XII. RELATED PROCEEDINGS APPENDIX**

None